

Ernest Warren, Jr. OSB 891384
E-Mail: e.warren@warrenpdxlaw.com
Warren & Sugarman
Suite 500, 838 SW First Avenue
Portland, Oregon 97204
Tel: (503) 228-6655
Fax: (503) 228-7019

Attorney for Defendant Robert Evans Mahler

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

UNITED STATES OF AMERICA,

Case No. 3:16-CR-00105-AA-1

Plaintiff,

v.

**DEFENDANT'S RESPONSE TO
GOVERNMENT'S SENTENCING
MEMORANDUM**

ROBERT EVANS MAHLER,

Defendant.

Defendant Robert Evans Mahler, by and through his attorney, Ernest Warren, Jr., responds to the Government's Sentencing Memorandum for the above-entitled matter.

I. OBJECTIONS

Defendant objects to any reference to more than one weapon being possessed and plead to and any inference of obstruction of justice because it was not mentioned at the time of entry of defendant's plea and the government accepted and were "satisfied" with Mr. Mahler's pleading to one gun and one count. Transcript of Record at 25:7-27:7, United States v. Mahler, (9th Cir. Sept 18, 2018).

///
///
///
///

Page 1 -**DEFENDANT'S RESPONSE TO GOVERNMENT'S SENTENCING
MEMORANDUM**

Warren & Sugarman
Attorneys at Law
838 SW First Avenue • Suite 500 • Portland, Oregon 97204
Tel (503) 228-6655 • Fax (503) 228-7019

RESPECTFULLY SUBMITTED this 11 day of February, 2019.

/s/ Ernest Warren, Jr.
Ernest Warren, Jr. OSB No. 891384
Attorney for defendant

Page 2 -**DEFENDANT'S RESPONSE TO GOVERNMENT'S SENTENCING
MEMORANDUM**

Warren & Sugarman
Attorneys at Law
838 SW First Avenue • Suite 500 • Portland, Oregon 97204
Tel (503) 228-6655 • Fax (503) 228-7019

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. 3:16-cr-00105-AA-1
7)
8 v.)
9) September 18, 2018
ROBERT EVANS MAHLER,)
10)
11 Defendant.) Portland, Oregon
12)
13 -----
14

15 CHANGE OF PLEA

16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE THE HONORABLE ANN L. AIKEN

18 UNITED STATES DISTRICT COURT JUDGE

19

20

21

22

23

24

25

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 NATALIE K. WIGHT
4 U.S. Attorney's Office
1000 SW Third Avenue
Suite 600
5 Portland, OR 97204

6 FOR THE DEFENDANT:

7 ERNEST WARREN, JR.
ALICIA HERCHER
8 VERA WARREN
Warren & Sugarman
838 SW First Avenue
Suite 500
9 Portland, OR 97204

10
11
12
13
14
15 COURT REPORTER: Jill L. Jessup, CSR, RMR, RDR, CRR
16 United States District Courthouse
1000 SW Third Avenue, Room 301
17 Portland, OR 97204
(503) 326-8191

18
19 * * *
20
21
22
23
24
25

1 TRANSCRIPT OF PROCEEDINGS

2 (September 18, 2018)

3 (In open court:)

4 (Whereupon a two-day jury trial was held, but not transcribed,
5 and plaintiffs rested.)

6 MR. WARREN: Your Honor, if I may have a moment with
7 my client, please.

8 THE COURT: Certainly.

9 MR. WARREN: Thank you, Your Honor. Can we go in the
10 hallway, please?

11 THE COURT: Pardon me?

12 MR. WARREN: Can we go into the hallway?

13 THE COURT: Absolutely. I'm happy to have the jury
14 out and give you plenty of time.

15 MR. WARREN: Can we have 10 or 15 minutes?

16 THE COURT: Members of the jury, I'll have you out.
17 Thank you.

18 (Jury not present.)

19 MR. WARREN: Your Honor, my client is not going to
20 put on any evidence and at this time he's willing to plead to
21 the charge.

22 THE COURT: Do you have a written plea agreement?

23 MR. WARREN: I don't.

24 THE COURT: Do you have a copy you can sit down and
25 review with your client?

1 MR. WARREN: I do not have one. Maybe --

2 THE COURT: We'll just take a break until you go get
3 one and have one filled out and completed.

4 MR. WARREN: Okay.

5 THE COURT: Okay.

6 MR. WARREN: In the past, somehow I got helped with
7 that.

8 THE COURT: In the past, I don't know how you have
9 gotten help with that, but I'm happy to help. I don't know if
10 I have a written plea agreement, but you might.

11 MR. WARREN: Yes. Usually there are a part of the --
12 I believe the forms are actually on the U.S. District Court
13 website.

14 THE COURT: They may be, but it will take us a minute
15 to look at those.

16 I'm sure Mr. Reeves can do that.

17 MS. WIGHT: Mr. Sussman believes they might have
18 some in the clerk's office.

19 THE COURT: We can get it here. It will take a
20 minute.

21 (Recess taken.)

22 MR. WARREN: If I may approach, Your Honor?

23 THE COURT: Sure.

24 MR. WARREN: For the record --

25 THE COURT: Excuse me. We're going to go back on the

1 record. I've been handed a copy, handwritten, and -- a
2 petition to enter a guilty plea and a copy of the indictment
3 has been returned.

4 Mr. Warren, you're reporting that you've reviewed this
5 with your client. We've been on a break for 15 or so minutes;
6 is that right?

7 MR. WARREN: That's correct, Your Honor.

8 THE COURT: And your client is prepared to plead
9 guilty to the one criminal count in the Case 16-00105; is that
10 correct?

11 MR. WARREN: Yes.

12 THE COURT: And I would ask to have the defendant
13 sworn.

14 DEPUTY COURTROOM CLERK: Please raise your right
15 hand.

16 (Defendant was sworn.)

17 DEPUTY COURTROOM CLERK: Please state your full name
18 and spell it for the record.

19 THE DEFENDANT: Robert Evans Mahler. R-o-b-e-r-t.
20 E-v-a-n-s. M-a-h-l-e-r.

21 THE COURT: Mr. Mahler, it is 3:27 in the afternoon,
22 the second day of trial, and just about 15 minutes ago, after
23 the government rested their case and your client -- your
24 attorney asked for some time with you to speak about how to
25 proceed, he returned and told the Court that you wish to enter

1 a plea to the indictment.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And so you've now had 15 or so minutes to
4 sit down and talk with Mr. Warren about the petition to enter a
5 guilty plea and to review that document with your lawyer; is
6 that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And so as you know, in discussing it with
9 him, I'm going to review this document with you. And I'm not
10 trying to trick you, but I'm asking you a number of questions
11 to make sure that this is a knowing and voluntary plea.

12 So tell me how old you are.

13 THE DEFENDANT: 69, Your Honor.

14 THE COURT: And how far have you gone through school?

15 THE DEFENDANT: I have a bachelor's degree,
16 Your Honor.

17 THE COURT: In what?

18 THE DEFENDANT: Communication.

19 THE COURT: From where?

20 THE DEFENDANT: Long Beach University -- California
21 State University, Long Beach.

22 THE COURT: Other colleges that you've attended?

23 THE DEFENDANT: Marylhurst, Your Honor.

24 THE COURT: Is that for an advanced degree?

25 THE DEFENDANT: It was for aviation. Yes,

1 Your Honor.

2 THE COURT: So you were able to read and understand
3 this document; correct?

4 THE DEFENDANT: Yes.

5 THE COURT: And Mr. Warren has been your lawyer in
6 this matter, and I believe -- correct me if I'm wrong, I think
7 he's the third lawyer in this case; correct?

8 THE DEFENDANT: Yeah. Well, fourth?

9 THE COURT: Fourth?

10 MR. WARREN: I believe I'm the fourth, Your Honor.

11 THE COURT: So you've had plenty of time to talk with
12 him about this document; correct?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And it does not come with a plea
15 petition -- a plea agreement from the government, a letter from
16 the government, offering to settle this case based on any
17 negotiations. There's no plea letter to this; right?

18 THE DEFENDANT: Correct, Your Honor.

19 THE COURT: But you have had a chance in detail to
20 review Count 1, which is the felon in possession of a firearm
21 charge; correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And you understand the nature of the
24 charge; correct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Any lesser-included offenses that you
2 might have raised; correct?

3 THE DEFENDANT: I -- I didn't understand that,
4 Your Honor.

5 THE COURT: Any lesser included offenses that might
6 have been raised -- you talked that over with your lawyer
7 whether that was an option?

8 MR. WARREN: Yes.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And any defenses -- you talked over the
11 defenses with your lawyer and how to defend against this case;
12 correct?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You have reviewed not only the
15 government's evidence, because it was presented to you before
16 we began trial, but you have been sitting through the trial and
17 have seen the government's evidence; correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you've had a chance to tell
20 Mr. Warren all facts known to you about this case; correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you've had a chance to talk with him
23 about all the decisions, legal and otherwise, that you needed
24 to make in this case; correct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you have no letter to settle this
2 case with the government. You're simply choosing to plead
3 guilty to the charge; correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And so you know that you can continue
6 this case, and we could -- you could put on evidence or not put
7 on evidence. I'm prepared to instruct the jury and let the
8 jury deliberate because we're at that stage of the trial. You
9 understand that; right?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And you're choosing, instead, to stop the
12 case at this particular point in time and simply plead guilty
13 to the charge; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you understand that the decisions --
16 these are both personal and legal decisions, that you're going
17 to make; correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are there any questions that your lawyer
20 or I may answer for you at this time?

21 THE DEFENDANT: I think we've covered it all,
22 Your Honor.

23 THE COURT: And you understand that you're going to
24 plead guilty to the following elements: That on or about
25 January 19, 2016, between that date and February 16, 2016, in

1 the District of Oregon, you are a felon and you knowingly
2 possessed firearms. And I'm going to review them later, but
3 they're listed in the indictment, and there are 17 listed, and
4 they had all previously been transported in interstate
5 commerce.

6 MS. WIGHT: Your Honor, the superseding has 18
7 firearms.

8 THE COURT: Oh, wait. I don't have the superseding
9 indictment. I just have the indictment.

10 Nope. That's the indictment.

11 18.

12 Mr. Warren, you handed back your copy, not my copy. I'm
13 sorry.

14 It's a superseding information. I have been calling it an
15 "indictment" because that's what I was handed. My mistake.

16 It's a superseding indictment. Count 1, same allegations,
17 with the addition of an 18th weapon; right?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Right?

20 You understand you'll be pleading guilty to those
21 elements; correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Are you satisfied with your legal
24 representation?

25 THE DEFENDANT: Fully, Your Honor.

1 THE COURT: So you took an oath to tell the truth a
2 few moments ago; correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: You understand I'm going to ask you
5 questions about the offense and your role in the offense, and
6 if you lie to the Court or you deliberately misstate
7 information in answer to questions that I place before you,
8 separate charges of perjury or false statement may be brought
9 against you, and the answers that you give in court today may
10 be used against you in a further court proceeding.

11 Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Are you under the influence of drugs or
14 alcohol?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Are you suffering from any injury,
17 illness, or disability that would affect your ability to think
18 or reason?

19 THE DEFENDANT: Well, yes, Your Honor. My shoulders
20 put me in constant pain, and I have a hamstring injury that is
21 needing surgery.

22 THE COURT: Are those two injuries affecting your
23 ability to think or reason?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: There are injuries and you have pain.

1 THE DEFENDANT: Yes.

2 THE COURT: But the pain is not such that it is
3 affecting your ability to think or reason; is that correct?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Mr. Warren, what's your observation?

6 MR. WARREN: I don't think he has any pain or mental
7 issue that would affect his reasoning.

8 THE COURT: You've had no difficulties communicating
9 with him, and he's understood as you've reviewed this document
10 with him --

11 MR. WARREN: Yes.

12 THE COURT: -- the decision he's -- he's making?

13 MR. WARREN: Yes.

14 THE COURT: Have you taken any medications in the
15 last seven days?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: What have you taken?

18 THE DEFENDANT: Hydrocodone.

19 THE COURT: When did you take it?

20 THE DEFENDANT: At night, just to get to sleep.

21 THE COURT: So the last time you took a dose was
22 when?

23 THE DEFENDANT: Two days ago.

24 THE COURT: So you haven't had any other medication?

25 THE DEFENDANT: Naprosyn.

1 THE COURT: What's that?

2 THE DEFENDANT: It's a pain medication, but it's
3 over-the-counter.

4 THE COURT: Does it -- how does it affect you?

5 THE DEFENDANT: Well, it eases the pain.

6 THE COURT: Does it affect your ability to be alert?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: It doesn't affect that.

9 When was the last time you took that drug?

10 THE DEFENDANT: Last night.

11 THE COURT: To go to sleep?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you taken anything this morning?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: So the only medication you've taken --
16 two days ago you took hydrocodone and last night you took
17 Naprosyn. Both of those are to ease the pain so you could
18 sleep; is that correct?

19 THE DEFENDANT: Well, I've taken metformin, but
20 that's for my high blood sugar.

21 THE COURT: Taking what?

22 THE DEFENDANT: Metformin.

23 THE COURT: When did you take that?

24 THE DEFENDANT: This morning.

25 THE COURT: That's taken in the normal course and

1 under a prescription and under a doctor's care?

2 THE DEFENDANT: Yes. Twice a day, Your Honor.

3 THE COURT: So you took it in the normal course, and
4 that would affect your blood pressure in order to keep it -- I
5 suspect to keep it low?

6 THE DEFENDANT: Blood sugar.

7 THE COURT: Or blood sugar. I'm sorry. To keep your
8 blood sugar regulated; correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And do you have to take -- do you have to
11 do testing throughout the day?

12 THE DEFENDANT: Well, no. They test me at OHSU,
13 Your Honor.

14 THE COURT: So you're not on a regular daily regimen
15 that you have to do testing?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: You're simply on a prescription that you
18 take in the morning and in the evening?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you've taken it as directed?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you're not suffering from any
23 diabetic episode at this point; is that correct?

24 THE DEFENDANT: Correct, Your Honor.

25 THE COURT: All right. You understand that

1 conviction of a crime can result in consequences in addition to
2 imprisonment. Those consequences may include deportation or
3 denial of naturalization, if you're not a United States
4 citizen; loss of eligibility to receive federal funds; loss of
5 certain civil rights, which may be temporary or permanent,
6 depending on applicable state or federal law, such as the right
7 to vote, to hold public office, and to possess a firearm; and
8 the loss of the privilege to engage in certain occupations
9 licensed by the state or federal government.

10 Do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, you don't have to plead guilty right
13 now. You can stand on all your constitutional guarantees and
14 take this matter to its conclusion with the jury.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: But in order for the Court to accept your
18 plea of guilty, you're going to give up, waive, or not enforce
19 some of those rights.

20 Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: More specifically, you're giving up the
23 following: The right to a speedy and public trial by jury,
24 during which you would be presumed to be guilty [sic], unless
25 and until proven guilty beyond a reasonable doubt, and by a

1 unanimous vote of 12 jurors.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: You're giving up the right to have the
5 assistance of an attorney at all stages of the proceedings.

6 Mr. Warren is standing by. If you enter your plea today
7 to this count, plead guilty, he will stand by you at
8 sentencing; but if you're giving up your right to go to the
9 conclusion of this case, he's obviously not going to finish
10 that. Correct?

11 THE DEFENDANT: Yes.

12 MS. WIGHT: Your Honor, just to correct the record.
13 I think you accidentally said "presumed guilty" instead of
14 "presumed innocent" on the record.

15 THE COURT: Presumed innocent. Thank you for
16 correcting me.

17 You understand?

18 THE DEFENDANT: Yes.

19 THE COURT: You're giving up the right to use the
20 power and process of the Court to compel the production of
21 evidence, including the attendance of witnesses in your favor.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: You're giving up the right to see, hear,
25 and confront all -- and cross-examine all witnesses called to

1 testify against you.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: You're giving up the right to decide for
5 yourself whether to take the witness stand and testify. You're
6 also giving up the right not to take the witness stand and to
7 have the Court instruct the jury that no inference of guilty
8 may be drawn from that decision.

9 Do you understand?

10 THE DEFENDANT: Yes.

11 THE COURT: Finally, you're giving up the right not
12 to be compelled to incriminate yourself.

13 Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: So you understand each and every one of
16 these rights; correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You're prepared to waive, give up, or not
19 enforce each and every one of these rights?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: So if you enter a plea of guilty, there
22 will be no trial. It won't be finished; right?

23 THE DEFENDANT: Excuse me, Your Honor?

24 THE COURT: The trial won't be finished; correct?

25 THE DEFENDANT: It will be?

1 MR. WARREN: Yes.

2 THE COURT: If you enter a guilty plea, the trial
3 will be done.

4 THE DEFENDANT: Oh, yes. I just couldn't hear you.

5 THE COURT: And you will not be able to appeal from
6 any denial of a pretrial motion that you may file or may have
7 filed concerning anything except the Court's jurisdiction.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: There is no plea, so there's no
11 applicability of 11(c)(1)(A), (B), or (C). So there's no
12 agreements; right?

13 MR. WARREN: That's right.

14 MS. WIGHT: That's correct.

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You understand the maximum sentence that
17 can be imposed upon you for the crime to which you're pleading
18 guilty to is ten years and a fine of \$250,000?

19 Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And there will be a fee assessment in the
22 amount of \$100 for the count of conviction pursuant to statute.

23 Do you understand?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: If you're ordered to pay a fine and you

1 willfully refuse to pay the fine, you can be returned to court
2 where the amount of the unpaid balance owed on the fine may be
3 substantially increased by the Court, and you could go to
4 prison for up to a year.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had plenty of time to talk to
8 Mr. Warren about the federal sentencing guideline system?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So you understand, following this
11 proceeding, there will be a presentence report prepared. In
12 that presentence report, there will be an advisory guidelines
13 range calculated and a sentencing recommendation. It is
14 advisory.

15 The Court will look at that information, coupled with the
16 factors in 18 U.S.C. Section 3553, including the nature and the
17 circumstance of this offense; your own criminal history and
18 characteristics; the goals of sentencing, punishment, or, as I
19 prefer to say, accountability deterrence; protection of the
20 community; rehabilitation; and any other factor that the Court
21 deems important in fashioning a reasonable but not greater than
22 necessary sentence for the charge to which you're pleading
23 guilty.

24 Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you also understand the Court may not
2 sentence you to a sentence greater than the maximum, which we
3 discussed a moment ago to be ten years?

4 Do you understand?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You also understand that if you go to
7 prison, you will serve your full sentence, except for credit
8 for good behavior that you may earn at the rate of 54 days for
9 each year of imprisonment served beyond a one-year sentence?

10 Do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And if you go to prison following your
13 prison sentence, there will be a term of supervised release.
14 During that term of supervised release, you will have a
15 probation officer and terms and conditions set by the Court
16 that you will be required to follow.

17 If you violate those terms and conditions, you can go back
18 to prison. In your particular case, your term of supervised
19 release may be up to three years. And if you're found in
20 violation, you could go back to prison for up to two.

21 Do you understand?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Unless there's an objection, I'm going to
24 skip paragraph 16 and 17 and go to 18.

25 MS. WIGHT: I don't have a copy of it.

1 THE COURT: It's restitution and interest.

2 MS. WIGHT: Okay. No objection.

3 THE COURT: If you are on probation, parole, or
4 supervised release in any other state or federal case, do you
5 understand that by pleading guilty in this Court, your
6 probation, parole, or supervised release may be revoked, and
7 you may be required to serve a consecutive sentence? That is a
8 sentence in addition to the one imposed in this case by this
9 Court.

10 Do you understand?

11 THE DEFENDANT: I didn't catch the first part of
12 that, Your Honor.

13 THE COURT: Okay. If you're on probation, parole, or
14 supervised release in another case --

15 THE DEFENDANT: Uh-huh. Oh, I understand,
16 Your Honor. Yes, Your Honor.

17 THE COURT: -- and you plead guilty, you could have a
18 consecutive sentence.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you also understand if you have other
22 cases pending, they're not resolved. They're in other
23 jurisdictions; right?

24 THE DEFENDANT: Yes.

25 THE COURT: And they're not part of the discussion

1 we're having right now placed on the record regarding how
2 they're to be resolved in conjunction with this plea or because
3 I don't have a letter of agreement. There's no other agreement
4 with anyone else; that those cases may be fully prosecuted and
5 you could receive a consecutive sentence.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: No plea agreement with the government;
8 correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: No other officer or agent or anyone else
11 is promising or suggesting you receive a lesser term of
12 imprisonment in this case; correct?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You understand you cannot rely on
15 promises or suggestions made outside of the presence of the
16 Court?

17 THE DEFENDANT: Yes.

18 THE COURT: Is anybody threatening you, forcing you,
19 twisting your arm, intimidating you, or making you plead guilty
20 at this time?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Do you make this plea freely and
23 voluntarily?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you understand the Court must be

1 satisfied that a crime occurred and that you, in fact,
2 committed the crime before your plea may be accepted?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Therefore, with respect to the charge to
5 which you are pleading guilty, do you represent that you did
6 the following acts and that the following facts are true --
7 please listen carefully -- on or about or between January 19,
8 2016, and February 16, 2016, in the District of Oregon, you,
9 Robert Evans Mahler, having been previously convicted of a
10 crime punishable by imprisonment for a term exceeding one year,
11 specifically, on or about June 29, 1994, in the District --
12 United States District Court, District of Oregon,
13 Case No. CR-92-00175-1-JO, false statement in acquisition of a
14 firearm; and, two, on or about June 23, 1995, in the United
15 States District Court, District of Oregon,
16 Case No. CR-95-00022-01-HA for illegally exporting a defense
17 article?

18 You knowingly and unlawfully possessed the following
19 firearms -- now, I am happy to sit and read all 18 specific
20 weapons.

21 Do you have a copy of the indictment and --

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: -- have you reviewed that?

24 THE DEFENDANT: I've reviewed it, Your Honor.

25 THE COURT: Mr. Warren, have you reviewed the list of

1 weapons?

2 MR. WARREN: I have.

3 THE COURT: Do you want me to recite them
4 individually, or will you and your client acknowledge that
5 those are, in fact, the weapons he possessed?

6 MR. WARREN: It's up to him.

7 THE COURT: I can read every weapon or you can --

8 MR. WARREN: Oh, no, we acknowledge that that's what
9 the indictment says, yes.

10 THE COURT: Mr. Mahler, you know the 18 weapons that
11 are listed in the superseding indictment; correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And, Mr. Warren, do you have a copy of
14 that that you can just show him?

15 MR. WARREN: I don't right now.

16 THE COURT: I have this copy I can hand back.

17 Why don't you ask your client to review it to make sure
18 it's correct.

19 I'm happy to read it.

20 MR. WARREN: Your Honor, we also -- in the indictment
21 in the area where you admit, we admitted that he was in
22 violation for possessing a firearm and ammunition. I didn't
23 think we would have to list every --

24 THE COURT: I'm -- I intend to be specific about
25 these.

1 MR. WARREN: Okay.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: So you reviewed -- you're handing me back
4 the copy of the superseding indictment. You have reviewed the
5 list of firearms noted on page 1 and page 2 of the superseding
6 indictment; correct? You've reviewed those?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And are all those weapons, all 18 of
9 them, weapons that you have possessed? You possessed.

10 THE DEFENDANT: I didn't possess all of those,
11 Your Honor.

12 THE COURT: Well, let's go through, and I'm going to
13 read them. Number one, pistol Walther Model P22 a .22 caliber,
14 serial number L186856.

15 Did you possess that?

16 THE DEFENDANT: I don't -- I think that was at Bill
17 and Connie's. Those were Bill and Connie's -- the Daggets'.

18 THE COURT: Mr. Warren, why don't you sit down with
19 your client and go over those and tell me which ones he's going
20 to acknowledge that he possessed.

21 MR. WARREN: Okay.

22 THE COURT: You have a superseding information now;
23 is that correct?

24 MR. WARREN: I -- Your Honor, I do. I have a
25 superseding indictment.

1 THE COURT: Superseding indictment. I'm sorry.

2 MR. WARREN: Yeah, I do have it. The question is
3 when I started packing up, I --

4 THE COURT: No worries. Here. Hold on. We'll make
5 you a copy and get you a copy.

6 MS. WIGHT: Your Honor, we did want to update. We
7 checked with ATF, and all of these firearms have been
8 administratively forfeited already. We weren't sure of that
9 initially. So they have been administratively forfeited.

10 THE COURT: We're not there yet.

11 MS. WIGHT: I was just saying if that makes a
12 difference.

13 THE COURT: No, it doesn't make a difference.

14 We just printed you a copy. We'll just -- we'll get to
15 the forfeiture allegation shortly.

16 MR. WARREN: There it is. Your Honor, I found it.

17 Okay. Your Honor, we're ready to proceed.

18 THE DEFENDANT: Your Honor, it's number 11, which is
19 a pistol Glock Model 21 .45 caliber, and it was found in the
20 Kia Sorento.

21 THE COURT: Others?

22 THE DEFENDANT: No, that's it, Your Honor. That
23 would be the one. There was one that was in my vehicle.

24 THE COURT: And it had been transported in interstate
25 commerce?

1 THE DEFENDANT: I have no idea, Your Honor.

2 THE COURT: Well, we have no gun manufacturers in
3 Oregon, so -- we have no gun manufacturers in Oregon.

4 THE DEFENDANT: Oh, well, then, yes, Your Honor. I'm
5 sorry.

6 THE COURT: Satisfied, Counsel?

7 MS. WIGHT: Yes, Your Honor.

8 THE COURT: To the charge, how do you wish to plead?
9 Guilty or not guilty.

10 THE DEFENDANT: Guilty, Your Honor.

11 THE COURT: Guilty plea is received.

12 Sentencing date?

13 DEPUTY COURTROOM CLERK: Sentencing is set for
14 December 10, 2018, at 2:00 p.m.

15 THE COURT: With regard to the forfeiture, I think I
16 heard you -- has that already been accomplished? And we have a
17 preliminary order of forfeiture; is that correct?

18 MS. WIGHT: That's correct. We don't have the POF
19 right now with us, though, but they have been administratively
20 forfeited, Your Honor.

21 MR. WARREN: Your Honor, if I may take issue with
22 that date? Across the street, Multnomah County, I have a
23 murder trial that will be going on that, I believe --

24 THE COURT: That's fine. Just what -- when can you
25 do it?

1 MR. WARREN: I would -- if the Court was open to --
2 I -- I have availability January 8th, if that's okay with the
3 Court and counsel.

4 THE COURT: Hold on.

5 MS. WIGHT: That works for the government.

6 DEPUTY COURTROOM CLERK: I think the 14th might be
7 your Portland date.

8 THE COURT: How about the 14th?

9 MR. WARREN: Let me check, please.

10 THE COURT: Or the 7th. 14th or the 7th?

11 MR. WARREN: Your Honor, the 14th is available for
12 me.

13 THE COURT: How full is that?

14 MS. WIGHT: I have something set for that day, but
15 I'm sure I can find somebody to cover.

16 THE COURT: Pardon?

17 MS. WIGHT: I have a trial set for that day, but if I
18 need someone to cover -- but the 7th is open for me. That is
19 supposed to go.

20 MR. WARREN: I don't have a trial, but on the 7th I
21 do have -- well, I can make it work on the 7th.

22 THE COURT: The 7th? Let's do the 7th.

23 DEPUTY COURTROOM CLERK: Sentencing is set for
24 January 7, 2019, at 10:00 a.m.

25 MR. WARREN: Thank you.

1 THE COURT: So Mr. Mahler, I presume, is on
2 conditions of release with Pretrial; correct?

3 MR. WARREN: Yes. I would ask that those be
4 continued.

5 THE COURT: Are there any issues we need to
6 address --

7 MR. WARREN: No.

8 THE COURT: -- with regard to that?

9 Mr. Mahler, this is a really important time for you to
10 comply with all those conditions. If you have any questions,
11 you need to contact your lawyer or contact your pretrial
12 officer immediately.

13 MS. WIGHT: Will Mr. Mahler be turning over his
14 passport to Pretrial?

15 THE DEFENDANT: I already returned it.

16 MS. WIGHT: Oh, you did? Okay.

17 THE DEFENDANT: Voluntarily, I might add.

18 MS. WIGHT: Oh, thank you.

19 THE DEFENDANT: But I did have a question,
20 Your Honor, about the replacement shoulder for either shoulder.
21 We had spoken about it earlier.

22 THE COURT: We have, but I don't see a plan. You can
23 talk to your lawyer and have me entertain other things later,
24 but not today.

25 THE DEFENDANT: Okay. Thank you, Your Honor.

1 THE COURT: Anything else?

2 MR. WARREN: No, Your Honor.

3 MS. WIGHT: We're good. Thank you.

4 THE COURT: I presume no one objects to my going back
5 and excusing the jurors?

6 MR. WARREN: No.

7 THE COURT: I'll do that. I always talk to them
8 afterwards, anyway. I think they'll appreciate an explanation.

9 So thank you for your time. If you need anything,
10 Cathy Kramer will be here to help you with cleaning up.

11 MS. WIGHT: Thank you.

12 THE COURT: Thank you. We're in recess.

13 (Hearing concluded.)

14

15

16

17

18

19

20

21

22

23

24

25

1 C E R T I F I C A T E
2

3 United States of America v. Robert Evans Mahler

4 3:16-cr-00105-AA-1

5 CHANGE OF PLEA

6 September 18, 2018

7
8 I certify, by signing below, that the foregoing is a
9 true and correct transcript of the record, taken by
10 stenographic means, of the proceedings in the above-entitled
11 cause. A transcript without an original signature, conformed
12 signature, or digitally signed signature is not certified.

13

14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

15

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 12/20/18
CSR Expiration Date: 9/30/20

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF SERVICE

I hereby certify that I have served a certified true copy of the **DEFENDANT'S RESPONSE TO GOVERNMENT'S MEMORANDUM** in the attached matter upon the parties listed below by notice of electronic filing using the CM/ECF System as follows:

Natalie Wight
Gregory Nyhus
U.S. Attorney's Office
District of Oregon
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
503-727-1015

and filed the original with the Court on the date listed below.

DATED this 11 day of February 2019.

WARREN & SUGARMAN

/s/Ernest Warren, Jr.
Ernest Warren, Jr. OSB No. 891384
Attorney for Defendant